

ESTTA Tracking number: **ESTTA179893**

Filing date: **12/11/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Burt's Bees, Inc.
Granted to Date of previous extension	12/12/2007
Address	701 Distribution Drive Durham, NC 27709 UNITED STATES
Attorney information	Joseph H. Nanney Jr. Wyrick Robbins Yates & Ponton LLP 4101 Lake Boone Trail, Suite 300 Raleigh, NC 27607 UNITED STATES jnanney@wyrick.com, rjones@wyrick.com Phone:919-781-4000

Applicant Information

Application No	78922447	Publication date	08/14/2007
Opposition Filing Date	12/11/2007	Opposition Period Ends	12/12/2007
Applicant	Noskin, Kenneth, M 217 E 86th Street- Suite 345 New York, NY 10028 UNITED STATES		

Goods/Services Affected by Opposition

Class 003.

All goods and services in the class are opposed, namely: Cosmetics and skin care products, namely, creams, lotions, soaps, skin cleansers, body and skin moisturizers, body cream, hand cream, body lotion, hand lotion, eye cream, eye gel, body scrub, body spray, body milk, exfoliants for skin, foot cream, foot lotion, foot scrub; bath additives, namely, bath beads, bath crystals, bath gels, non-medicated bath salts, shower gel, shower soap, body wash, body soap, hand salve, namely, non-medicated skin salve, skin masks, skin toner, lip gloss, lip color, lip balms, lipstick, face and body powder, foundation, blushers, mascara, eye shadow, eyeliner, nail color, namely, nail polish, hair shampoo, hair conditioner, hair styling preparations, personal deodorant; suntanning preparations, namely, suntan lotion, after-sun lotion, self tanning lotion, non-medicated skin care preparations and cosmetic body care preparations gift sets; shaving preparations, namely, shaving lotion, shaving cream, shaving balm, shaving foam, shaving gel, after-shave; fragrances, namely, perfume, cologne, eau de toilette and scented room fragrances

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2171302	Application Date	06/16/1997
Registration Date	07/07/1998	Foreign Priority Date	NONE
Word Mark	BURT'S BEES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1988/03/27 First Use In Commerce: 1988/03/27 cosmetics and skin care products, namely, cremes, oils, soaps, moisturizers, lotions, lip balms and glosses, shaving lotions, shaving balms, and colognes		

U.S. Registration No.	2169521	Application Date	06/02/1997
Registration Date	06/30/1998	Foreign Priority Date	NONE
Word Mark	BABY BEE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1992/02/06 First Use In Commerce: 1992/02/06 cosmetics and skin care products, namely, cremes, oils, soaps, powders, milk baths, emollient baths, fragranced baths, moisturizing baths, non-medicated milk soaks, non-medicated emollient soaks, non-medicated fragranced soaks, non-medicated moisturizing soaks, moisturizers, gels, lotions, and conditioners		

Attachments	Notice of OppositionBEEHEALTHY.pdf (3 pages)(12634 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/jhn/
Name	Joseph H. Nanney Jr.
Date	12/11/2007

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BURT'S BEES, INC.,)
Opposer,)
v.) Opposition No. _____
KENNETH M. NOSKIN,)
Applicant.)
)

NOTICE OF OPPOSITION

Opposer, Burt's Bees, Inc., a Delaware Corporation, with a business address of 701 Distribution Drive, Durham, North Carolina 27709, hereby opposes registration of the mark BEE HEALTHY that is the subject of application Serial No. 78/922,447, published in the Official Gazette of August 14, 2007, and requests that registration to Applicant be refused.

As grounds in support of its opposition, Opposer asserts as follows:

1. Opposer, since March 1988 and long prior to the July 5, 2006 date of filing upon which Applicant may rely as the date of first use, has adopted and continuously used the mark "BURT'S BEES" as a trademark for "cosmetics and skin care products, namely, crèmes, oils, soaps, moisturizers, lotions, lip balms and glosses, shaving lotions, shaving balms and colognes."

2. Opposer is the owner of Registration No. 2,171,302 for the mark BURT'S BEES for "cosmetics and skin care products, namely, crèmes, oils, soaps, moisturizers, lotions, lip balms and glosses, shaving lotions, shaving balms and colognes." The registration is valid, subsisting, unrevoked, uncanceled and incontestable. Opposer also has valid and subsisting international registrations throughout the world for the BURT'S BEES trademark.

3. Opposer is the owner of Registration No. 2,169,521, issued on June 30, 1998 for the mark BABY BEE for "cosmetics and skin care products, namely, crèmes, oils, soaps, powders, milk 10489.119-506194 v1

baths, emollient baths, fragranced baths, moisturizing baths, non-medicated milk soaks, non-medicated emollient soaks, non-medicated fragranced soaks, non-medicated moisturizing soaks, moisturizers, gels, lotions, lotions and conditioners” in International Class 3. The registration is valid, subsisting, unrevoked, uncanceled and incontestable. Opposer also has valid and subsisting international registrations throughout the world for the BABY BEE trademark.

4. Opposer since March 1988 and February 1992, long prior to July 5, 2006, the date of first use upon which Applicant may rely, has adopted and continuously used BURT’S BEES and BABY BEE trademarks for the goods listed above and sold such goods in retail stores throughout the United States and on the Internet.

5. Opposer has expended substantial resources in advertising and protecting its goods offered under the BURT’S BEES and BABY BEE marks. The BURT’S BEES and BABY BEE marks have acquired distinctiveness throughout the United States based on each mark’s substantial use and popularity with consumers who seek natural skin care products.

6. Applicant filed an intent-to-use application to register the mark BEE HEALTHY for “Cosmetics and skin care products, namely, creams, lotions, soaps, skin cleansers, body and skin moisturizers, body cream, hand cream, body lotion, hand lotion, eye cream, eye gel, body scrub, body spray, body milk, exfoliants for skin, foot cream, foot lotion, foot scrub; bath additives, namely, bath beads, bath crystals, bath gels, non-medicated bath salts, shower gel, shower soap, body wash, body soap, hand salve, namely, non-medicated skin salve, skin masks, skin toner, lip gloss, lip color, lip balms, lipstick, face and body powder, foundation, blushers, mascara, eye shadow, eyeliner, nail color, namely, nail polish, hair shampoo, hair conditioner, hair styling preparations, personal deodorant, suntanning preparations, namely, suntan lotion, after-sun lotion, self-tanning lotion, non-medicated skin care preparations and cosmetic body care preparations ; gift sets; shaving preparations, namely, shaving lotion, shaving cream, shaving balm, shaving foam, shaving gel, after-shave; fragrances, namely,

perfume, cologne, eau de toilette and scented room fragrances.” That application was filed on July 5, 2006, and was assigned Serial No. 78/922,447.

7. In view of the similarity of the respective marks and the related nature of the goods and services of the respective parties, it is alleged that Applicant’s mark so resembles Opposer’s mark previously used and registered in the United States, and not abandoned as to be likely to cause confusion, or to cause mistake or to deceive.

8. Opposer believes that registration of the mark shown in the opposed application will result in damage to Opposer under the provisions of Section 2(d) of the U.S. Trademark Act, 15 U.S.C. §1052(d) pursuant to the allegations above.

WHEREFORE, Opposer prays that the opposition be sustained and that registration to Applicant be refused.

Respectfully submitted this 7th day of December, 2007.

/JHN/

Joseph H. Nanney, Jr.
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